IN THE

# Supreme Court of the United States

October Term, 1961

No. 923

GIRARD LODGE NO. 700, etc., JOSEPH F. McGOVERN, FRANK GORMLEY, WILLIAM C. DENNEY, MOSES RUFFIN,

*Petitioners,*

vs

GRAND LODGE, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, et al.

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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IN THE

# SUPREME COURT OF THE UNITED STATES.

October Term, 1961.

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No.

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GIRARD LODGE NO. 100, ETC., JOSEPH F. McGOVERN, FRANK GORMLEY, WILLIAM C. DENNEY, MOSES RUFFIN,
*Petitioners,*

VS.

GRAND LODGE, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, ET AL.

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## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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Joseph F. McGovern, Frank Gormley, William C. Denney, Moses Ruffin, your petitioners, pray that a Writ of Certiorari issue to review the Decree of the Supreme Court of Pennsylvania entered in the above-entitled case on January 30, 1961.

## OPINIONS BELOW.

The Opinions of the Court of Common Pleas of Philadelphia dated March 17, 1960 are not reported (Record page 98a et seq. and 113a).

The Opinions of the Supreme Court of Pennsylvania—majority and dissent—are reported in 402 Pa. 503 (infra, Appendix A).

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## JURISDICTION.

1. The Decree of the Pennsylvania Supreme Court was entered on January 30, 1961.

2. The Petition for Reargument before the Supreme Court was denied February 20, 1961.

3. The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. Sec. 1257 (3).

## QUESTION PRESENTED.

May a court make a finding of civil contempt, without a hearing, and order the contemnors to purge themselves of the contempt by making certain payments of money, and when the contemnors fail to comply with said order, may the court enter money judgments against the said contemnors?

## CONSTITUTIONAL PROVISION INVOLVED.

The Fourteenth Amendment to the United States Constitution (Appendix B).

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## HOW THE FEDERAL QUESTION WAS RAISED.

*Due Process*

A. In the Philadelphia Common Pleas Court.
Pleadings.

1. Paragraph 10 of Answer (Record 76a-77a).

2. Paragraph 19 of Answer (Record 79a).

3. Docket Entries, Demand for Jury Trial (Record 4a).

B. In the Pennsylvania Supreme Court.

1. Argument II. (d) Brief page 24.

2. Argument III. (c) Brief page 29.

3. Argument III. (e) Brief page 32.

4. Argument IV. (c) Brief page 35.

5. Argument IV. (d) Brief page 39.

6. Argument V. Brief page 40.

7. Argument V. (a) Brief page 41.

8. Argument V. (f) Brief page 59.
(last paragraph, page 61 of Brief clearly raises the issue of the Court's entering money judgments without a hearing.)

C. In the Petition to the Pennsylvania Supreme Court for Reargument.
Paragraphs 1 to 9, inclusive.

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## STATEMENT OF THE CASE.

In 1954 the Grand Lodge of the Brotherhood of Railway and Steamship Clerks* filed a Complaint in Philadelphia Common Pleas Court against four of its Philadelphia lodges, alleging certain acts of defiance automatically caused these lodges to forfeit their charters. The Brotherhood asked that the Court restrain the lodges from withdrawing funds from certain bank depositories. The suit named the four lodges as defendants, and the financial officers, the present petitioners, as representatives of the lodges. Pending the outcome of this litigation, the lower Court entered an interlocutory order allowing the lodges to withdraw specified sums monthly. After lengthy hearings the lower Court decreed that forfeiture was too harsh a punishment.

The Grand Lodge, dissatisfied with the Decree of the lower Court, succeeded in securing a reversal in the Pennsylvania Supreme Court. (*Grand Lodge v. Girard Lodge*, 384 Pa. 248.) There the Supreme Court held that the

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* Shorthand for the International Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

charters of the lodges had properly been forfeited and ordered the financial officers on behalf of the lodges to account for all monies received and spent during the litigation below. At the same time the lodges were dissolved by the Supreme Court and your petitioners ceased functioning as financial officers in June, 1956.

The Grand Lodge on September 18, 1956 returned to the lower Court with a Rule to show cause why the lodges should not repay certain funds which the Grand Lodge alleged had been spent contrary to the lower Court's interlocutory decree (R. 16a). An Answer was filed by the lodges. No testimony was taken, though interrogatories and answers thereto were filed by your petitioners (R. 32a). The Brotherhood took the depositions of its auditors. As a result of this Petition, on June 6, 1958 the lower Court entered a Final Decree based on the *Brotherhood's audit* (contrary to the Pennsylvania Supreme Court's Order which was that the *defendants were to account*) (R. 57a). In this Decree the lower Court ordered the defendant lodges *and* their financial officers to make certain payments to the Grand Lodge. This despite the fact that the lodges had been out of existence since June, 1956 and your petitioners had not functioned since that date as financial officers; as a matter of fact your petitioners were expelled from the Brotherhood in 1956 and to this day have not been restored to membership.

On the basis of this Final Decree, on June 14, 1958 the Grand Lodge entered judgments against your petitioners in their individual capacity (R. 61a).

On August 6, 1958 your petitioners returned to the lower Court with a Rule to show cause why these judgments should not be stricken, alleging that they could not be entered against them *as individuals* since they had been sued in their representative capacity (R. 61a). The Grand Lodge refused to answer this Petition. Under Pennsylvania law

the averments of a petition are taken as true when not denied. The lower Court on September 26, 1958 struck the judgments entered against your petitioners and ordered the Grand Lodge to proceed against the defendant lodges (R. 67a).

On October 14, 1958 the Grand Lodge filed exceptions to the September 26, 1958 Order which struck the judgments against your petitioners from the record; it took no appeal from that Order; but on October 30, 1958 it requested and received of the Court the privilege of rearguing the question of whether or not judgments could be entered against your petitioners as individuals. On December 23, 1958 the Court reaffirmed the September 26, 1958 Order, striking the judgments from the record (R. 4a).

On October 14, 1958 the Grand Lodge petitioned the lower Court for a Rule on your petitioners to show cause why they should not be held in contempt of court unless they pay the sums specified by the Court in the Final Decree of June 6, 1958. Your petitioners filed an Answer (R. 75a). Your petitioners demanded a jury trial. (See dockets R. 4a.) The jury trial was denied by the lower court (R. 4a). The lower Court without a hearing—only on Petition and Answer—found your petitioners in contempt of court on December 23, 1958. On May 7, 1959 the Grand Lodge then obtained a Rule from the lower Court for an attachment of one of your petitioners, Joseph F. McGovern (R. 82a). The lower Court discharged this Rule (R. 92a).

On December 18, 1959 the Grand Lodge petitioned the lower Court for a Rule on your petitioners to show cause why their property should not be sequestered because of their failure to comply with the contempt order.

This Petition was answered by your petitioners. The lower Court refused to take testimony, but nevertheless on March 17, 1960 it entered judgments against your peti-

tioners—as individuals—for the full sums as found in the Final Decree of June 6, 1958.

Your petitioners appealed to the Pennsylvania Supreme Court alleging that the lower Court was powerless to enter personal judgments against your petitioners because:

(a) Your petitioners were originally sued in their representative capacity;

(b) The lower Court's Final Decree stated that the lodges and their financial officers were to make the repayments;

(c) The lower Court had on September 26, 1958 struck the judgments against the officers—as individuals—and ordered the Grand Lodge to proceed against the defendant lodges;

(d) The lower Court could not enter a finding of contempt without Due Process—no hearing was afforded your petitioners;

(e) The lower Court could not enter judgments against your petitioners—as individuals—without Due Process—even on the basis of a Petition for Sequestration, since no hearing was afforded your petitioners.

The Grand Lodge filed a Motion to Quash the appeal in the Pennsylvania Supreme Court alleging that your petitioners had had a semblance of a hearing on the original Petition for Repayment (the September 18, 1956 Petition) which brought about the Final Decree of June 6, 1958, and, therefore, they said there was no need for a hearing on the contempt Petition or the Petition for writs of sequestration which led the Court finally on March 17, 1960 to enter judgments against your petitioners, as individuals. After this Petition was answered, the Pennsylvania Supreme

Court on January 30, 1961 denied the Motion to Quash the appeal.

However, on January 30, 1961 the Pennsylvania Supreme Court in a five to two decision upheld the lower Court's entry of judgments against your petitioners as individuals. That Court took the view that your petitioners were impeding a full faith compliance with its orders, and called the petitioners' appeal "obstructive tactics." In a dissertation on the difference between civil and criminal contempt, it ignored the fact that whatever label was placed on the contempt charge, basic Due Process required that the persons charged with contempt should be afforded an opportunity to defend. Its strange silence on the lack of Due Process in the lower Court's proceedings led two Justices to dissent vigorously. Justices Cohen and Musmanno held that "whether the contempt was civil or criminal the defendants were entitled to a hearing wherein the Court would adjudge that a contempt had or had not been committed."

The majority only indirectly hinted at the basic issue of Due Process when it said that the defendants had not appealed the contempt finding in time; while the dissent held that "even though not appealed from (the denial of the safeguard of a hearing) . . . is error of such magnitude" they would reverse.

On February 20, 1961 the Pennsylvania Supreme Court denied a Petition for Reargument.

## REASONS WHY THE WRIT SHOULD BE GRANTED.

There is no recorded case in the entire history of the Commonwealth of Pennsylvania where a court entered a finding of civil contempt without a hearing.

The Pennsylvania Supreme Court chose to skirt this basic constitutional question by saying that because your petitioners did not appeal the contempt finding in time, they were barred from raising the question on appeal.

In this statement that Court was not only less than concerned with the constitutional rights of your petitioners but it ignored the doctrine of Stare Decisis as well; thus depriving your petitioners of *the equal protection of the laws.* For it has always been the law of Pennsylvania that where the Court has no jurisdiction over the parties its judgment is void, and always subject to attack. *Simpson's Estate,* 253 Pa. 217. Thus the Pennsylvania appellate court, instead of squarely facing the issue of whether or not the Court below had the power to enter judgments against your petitioners, dismissed the issue by holding that appeals had not been taken in time.

By employing this non-federal reason for refusing to review the judgment of the Court below, the Pennsylvania Supreme Court hoped to defeat the jurisdiction of the United States Supreme Court. But this Court said in *N. A. A. C. P. v. Ala.*, 357 U. S. 449:

> "Our jurisdiction is not defeated if the non-federal ground relied on by the state court is 'without any fair or substantial support,' *Ward v. Board of County Commissioners,* 253 U. S. 17, 22. It thus becomes our duty to ascertain, '. . . in order that constitutional guaranties may appropriately be enforced, whether the asserted

non-federal ground independently and adequately supports the judgment.' *Abie State Bank v. Bryan*, 282 U. S. 765, 773."

As the dissent in the Pennsylvania Supreme Court noted (Appendix A, page 15) the judgment of contempt was made on "*petition, answer and argument.*" Since no hearing was afforded your petitioners, " . . . due process would require that defendants have a hearing wherein the court would adjudge that a contempt had or had not been committed."

The majority of the Pennsylvania Supreme Court went along with the lower Court in holding that the contempt with which your petitioners were charged was *civil*. But in permitting the lower Court to make a finding of contempt without a hearing, it squarely violated the principle enunciated by this Court in *Cooke v. U. S.*, 45 Supreme Court 390, 267 U. S. 517, 69 L. Ed. 767, where at page 536 it was said:

> "When the contempt is not in open court, however, there is no such right or reason in dispensing with the necessity of charges and the opportunity of the accused to present his defense by witnesses and argument. The exact form of the procedure in the prosecution of such contempts is not important."

And at page 537:

> "Due Process of Law, therefore, in the prosecution of contempt, except that committed in open court requires that the accused should be advised of the charges and have a reasonable opportunity to meet them by way of defense or explanation. We think this includes the assistance of counsel if requested and the right to call witnesses to give testimony, relevant either to the

issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed."

The Pennsylvania Supreme Court thus permitted the lower Court to deny a hearing on the contempt charges; and when your petitioners did not comply with the "contempt finding and order," the lower Court was permitted to enter money judgments against your petitioners as punishment.

The action of the Supreme Court of Pennsylvania in permitting the lower Court to make a finding of contempt without a hearing represents a violation of procedural due process; its action in permitting money judgments to be entered against your petitioners represents a confiscation of your petitioners' property contrary to substantive due process; and its refusal to question the efficacy of the judgment of contempt by the lower Court on the ground that that question was not raised *in time* deprived your petitioners of the equal protection of the laws, all of which is contrary to the commands of the Fourteenth Amendment.

If this Petition for a Writ of Certiorari is not granted, labor unions may with impunity employ the Pennsylvania courts through contempt proceedings to punish intra-union opposition, secure that a hearing need not be afforded the lesser member.

## CONCLUSION.

For the foregoing reasons this Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania should be granted.

Respectfully submitted,

LAWRENCE J. RICHETTE,
*Counsel for Petitioners.*

## APPENDIX A.

## IN THE SUPREME COURT OF PENNSYLVANIA

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GRAND LODGE OF THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, et al.,

v.

GIRARD LODGE NO. 100, et al.

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JOSEPH F. McGOVERN, FRANK GORMLEY, WILLIAM C. DENNEY and MOSES RUFFIN,
Appellants.

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## OPINION OF THE COURT.

(Reported 402 Pa. 523.)

JONES, C. J.

This suit in equity was instituted in the court below on February 5, 1954, and, in due course, eventuated in an order by this court on February 6, 1956. Our order directed the defendant Lodges to turn over to the plaintiff Grand Lodge the charters, supplies, books, records, funds and other property belonging to the Grand Lodge under the forfeitures and further ordered the defendant officers to account for all monies received and spent by them after

February 5, 1954. The record was returned to the court below for such action as justice and equity might require in effectuation of our decision, including the dismissal of the defendants' counterclaim. See 384 Pa. 248, 268, 120 A. 2d 523, 532. Ever since then there has been a persistent effort on the part of the defendant officers to resist or impede a full faith compliance below with the directions of our order. The culmination of the defendant officers' obstructive tactics is embodied in their present appeals from the decree of the court below of March 17, 1960, which directed the entry of the several judgments against them, respectively, in differing sums. We would affirm forthwith were it not for the fact that counsel for the plaintiff-appellee stated, at bar, that the defendants are entitled to a further credit.

The contention that the orders of the court below of December 23, 1958, adjudging the respondents in contempt whereof they could purge themselves by the payment of specified sums within thirty days, were punishment for conduct "in the nature of an indirect criminal contempt" is without any basis whatsoever to support it. The proceeding was not for an indirect criminal contempt but for a civil contempt, viz., the respondents' disobedience of the decree in equity entered by the court below pursuant to the mandate of this court sur our final order entered at 384 Pa. 248, 268, 120 A. 2d 523, 532, on the respondents' appeals. It was a use of civil process to compel obedience to a decree in equity. The relief granted was primarily for the benefit of the complainant and not to vindicate the dignity or authority of the court or to protect the interests of the general public. See *Knaus v. Knaus*, 387 Pa. 370, 376-377, 127 A. 2d 669, where Mr. Justice Chidsey, speaking for the court, pertinently observed: "The dominant purpose of a contempt proceeding determines whether it is civil or criminal. If the dominant purpose is to vindicate

the dignity and authority of the court and to protect the interest of the general public, it is a proceeding for criminal contempt. But where the act of contempt complained of is the refusal to do or refrain from doing some act ordered or prohibited primarily for the benefit of a private party, proceedings to enforce compliance with the decree of the court are civil in nature. The purpose of a civil contempt proceeding is remedial, and judicial sanctions are employed (1) to coerce the defendant into compliance with the court's order, and (2) in some instances to compensate the complainant for losses sustained: United States v. United Mine Workers of America, 330 U. S. 258, 303. A judgment in a civil contempt proceeding for the benefit of a private plaintiff will, of course, incidentally vindicate the authority of the court just as on the other hand a criminal contempt judgment, which is punitive, may often advance private interests. But the test is the dominant purpose, not the incidental result: Gompers v. Bucks Stove & Range Company, 221 U. S. 418, 441."

In any event, the orders of December 23, 1958, were never enforced against the respondents; nor were they ever appealed, and the time for appealing them has long since passed. The only appeals actually now before us are from the decree in equity entered by the court below on March 17, 1960, directing the entry of money judgments against the several defendants in the respectively varying sums for which they were found to be accountable.

As determination of the further credit, to which reference has hereinabove been made, will necessitate a *pro tanto* modification of the decree, to the extent of such credit if and when established, the record will be returned to the court below for modification of the decree accordingly.

Appeals dismissed at appellants' costs and record remanded for further proceeding not inconsistent with this opinion.

IN THE SUPREME COURT OF PENNSYLVANIA.

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GRAND LODGE OF THE BROTHERHOOD OF RAILWAY and STEAMSHIP CLERKS, et al.,

v.

GIRARD LODGE NO. 100, et al.

---

JOSEPH F. McGOVERN, FRANK GORMLEY, WILLIAM C. DENNEY and MOSES RUFFIN,
Appellants.

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## DISSENTING OPINION.

COHEN, J.

I depart from the majority because the lower court adjudicated the defendants in contempt by this order, " . . . after petition, answer and argument it is ordered and decreed that Joseph F. McGovern is adjudged and declared in contempt of this court and subject to attachment of his person . . ." which discloses that the contempt adjudication was made without hearing.

It matters not whether this is an indirect criminal contempt or an indirect civil contempt. If this were an indirect criminal contempt under the Act of June 23, 1931, P. L. 925, 17 P. S. §2047, defendants would be entitled to a trial by jury, since that Act discontinued the former practice of

having the judge alone make the factual determination whether an indirect criminal contempt had been committed. If this were an indirect civil contempt, the determination would be made by the judge alone, but due process would require that defendants have a hearing wherein the court would adjudge that a contempt had or had not been committed. This safeguard was denied defendants and, even though not appealed from, is error of such magnitude that I would reverse.

Justice Musmanno joins in this dissent.

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## APPENDIX B.

Fourteenth Amendment to the United States Constitution:

> "... nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."